



Substitute House Bill No. 5117

Public Act No. 10-85

***AN ACT CONCERNING CONSERVATION AND PRESERVATION
RESTRICTIONS HELD BY THE STATE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 47-42d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) For purposes of this section, "state or local land use agency" includes, but is not limited to, a municipal planning commission, municipal zoning commission, combined municipal planning and zoning commission, a municipal zoning board of appeals, municipal inland wetlands and watercourses agency, a municipal historic district commission and any state agency that issues permits for the construction or improvement of real property.

(b) No person shall file a permit application with a state or local land use agency or a local building official or director of health, other than for interior work in an existing building or for exterior work on an existing building that does not expand or alter the footprint of [an] such existing building, relating to property that is subject to a conservation restriction or a preservation restriction unless the applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the

Substitute House Bill No. 5117

party holding such restriction, including, but not limited to, any state agency that holds such restriction, not later than sixty days prior to the filing of the permit application. In lieu of such notice, the applicant may submit a letter from the holder of such restriction or from the holder's authorized agent, verifying that the application is in compliance with the terms of the restriction. If the applicant has provided written notice pursuant to this subsection, the holder of the restriction may provide proof to the state or local land use agency or local building official or director of health that granting of the permit application will violate the terms of the restriction and such agency, official or director shall not grant the permit. Nothing in this section shall be construed to prohibit the filing of a permit application or to require such written notice when the activity that is the subject of such permit application will occur on a portion of property that is not restricted under the terms of such conservation or preservation restriction.

(c) If the applicant fails to comply with the provisions of subsection (b) of this section, (1) the party holding the conservation or preservation restriction, other than a state agency that holds such restriction, may, not later than fifteen days after receipt of actual notice of permit approval, file an appeal with the state or local land use agency or local building official or director of health, subject to any rules of such agency, official or director relating to appeals. The agency, official or director shall reverse the permit approval upon a finding that the requested land use violates the terms of such restriction; or (2) the state agency that holds such restriction may, not later than thirty days after receipt of actual notice of permit approval, file an appeal with the state or local land use agency or local building official or director of health, subject to any rules of such state or local land use agency, official or director relating to appeals. Such state or local land use agency, official or director shall immediately reverse such permit approval if the commissioner of the state agency that

Substitute House Bill No. 5117

holds such restriction certifies that the land use authorized in such permit violates the terms of such conservation or preservation restriction. The commissioner of the state agency that holds such restriction may impose a civil penalty of not more than: (A) Five thousand dollars for a violation of subsection (b) of this section; and (B) one thousand dollars for each day that such violation continues after the applicant receives an order from such commissioner assessing a civil penalty pursuant to subparagraph (A) of this subsection.

Sec. 2. (NEW) (*Effective from passage*) (a) For purposes of this section:

(1) "Conservation restriction" has the same meaning as provided in section 47-42a of the general statutes;

(2) "Preservation restriction" has the same meaning as provided in section 47-42a of the general statutes; and

(3) "Open space land" has the same meaning as provided in section 12-107b of the general statutes.

(b) Whenever a municipality acquires any real property with the intent to place a conservation restriction, preservation restriction or other restriction on the use of such property, including acquiring property with funds specifically allocated for a conservation or preservation purpose, such municipality shall record in the land records a description of any such restriction and any applicable source of such restriction, including, but not limited to, the date of the referendum or local legislative body action that authorized such acquisition contingent upon certain use restrictions and the source of the funding for the acquisition of such property if such funding restricted the use of such property.

(c) Whenever a municipality intends to permanently protect any municipal property by dedicating such property as a park or open space land, such municipality shall record in the land records a

Substitute House Bill No. 5117

description of such property, the date of such dedication and the local legislative body action that authorized such dedication.

(d) The failure of a municipality to comply with the provisions of subsection (b) or (c) of this section shall not be evidence of the lack of any such conservation restriction, preservation restriction or open space land dedication.

(e) Nothing in this section shall be construed to amend or alter any other legal right or obligation of a municipality concerning open space land or park land.

(f) If a municipality fails to comply with a dedication of land as open space land or park land or the terms of a conservation or preservation restriction, the Attorney General may bring an action in the superior court to enforce the public interest in such dedication or conservation or preservation restriction.